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Rights of indigenous peoples: rights of indigenous peoples

Rights of indigenous peoples

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, in accordance with Human Rights Council resolution 21/24.

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Report of the Special Rapporteur on the rights of indigenous peoples

Summary

This is the final report of the current Special Rapporteur on the rights of indigenous peoples, James Anaya, to the General Assembly. The Special Rapporteur devotes the first part of the report to describing his activities since beginning his mandate, while identifying work methods and lessons learned, as well as both positive experiences and challenges in his work. Later in the report, he addresses factors that debilitate commitment to and action by States and other actors to implement the Declaration on the Rights of Indigenous Peoples, drawing upon the Special Rapporteur's experiences over the past years. The objective of this discussion is to advance thinking that will help to overcome these debilitating factors in favour of concrete measures of implementation.

I. Introduction

1. The present report is being submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 21/24. This is the final report of the current Special Rapporteur on the rights of indigenous peoples, James Anaya, to the Assembly, as his mandate expires on 30 April 2014.

2. In the light of this, the Special Rapporteur devotes the first part of the report to describing his activities since beginning his mandate, while identifying work methods and lessons learned, as well as both positive experiences and challenges in his work. He hopes that the report, in addition to providing an up-to-date account of his activities, will be of use to the next Special Rapporteur on the rights of indigenous peoples as she or he enters into the position, as well as to other special procedures mandate holders of the Human Rights Council as they continue to reflect on their own work methods.

3. The Special Rapporteur is specifically mandated to promote the Declaration on the Rights of Indigenous Peoples and consequently, he considers the Declaration to constitute the primary normative framework for carrying out all aspects of his work. The latter part of his report addresses factors that debilitate commitment to and action by States and other actors to implement the Declaration, drawing upon the Special Rapporteur's experiences over the past years. The objective of this discussion is to advance thinking that will help overcome these debilitating factors in favour of concrete measures towards implementation.

4. The Special Rapporteur would not have been able to carry out the work described in the present report without the support of various individuals and institutions. He would like to express his gratitude to the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its support to him during his mandate over the years. He would also like to thank the staff, consultants, researchers, and students of the support project for the Special Rapporteur on Indigenous Peoples at the University of Arizona for their assistance in all aspects of his work, and to the University of Arizona College of Law for its flexibility and accommodation of his work as Special Rapporteur. Finally, he would like to thank the numerous indigenous peoples, States, academics, and other experts who have cooperated with his mandate over the past years in the advancement of the rights of indigenous peoples around the world.

II. Activities pursuant to the mandate

A. Areas of work

5. From the first years of his mandate, the Special Rapporteur devoted significant attention to refining his work methods within the terms of his mandate provided by the Human Rights Council. He has tried developing work methods oriented towards building a constructive dialogue with Governments, indigenous peoples, non-governmental organizations, relevant United Nations agencies and others in order to address challenging issues and situations and build on advances already made. He hopes that future work of the mandate will be able to focus more on moving beyond reacting to denouncements of alleged human rights violations, to

helping to assist indigenous peoples and States to develop concrete proposals and programmes of action for advancing the rights of indigenous peoples.

6. The Special Rapporteur provides below a summary of activities, which fall within four interrelated work areas: promoting good practices; country reports; cases of alleged human rights violations and thematic studies. Along with describing his activities, the Special Rapporteur provides comments on his achievements and on the difficulties he has faced within these areas of work, and identifies outstanding issues concerning work methods that merit further attention.

1. Promotion of good practices at the national and international levels

7. The Special Rapporteur has a specific mandate from the Human Rights Council, set out in its resolution 15/14 to examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of indigenous peoples, and to identify, exchange and promote best practices. In this connection, he has engaged in a range of activities throughout his mandate to advance legal, administrative and programmatic reforms at the international and the national levels in accordance with the Declaration on the Rights of Indigenous Peoples as well as other international instruments relating to the human rights of indigenous peoples.

8. Many of these activities have taken place in relation to other work areas, that is, in the development of country reports, thematic studies or responses to cases of alleged violations of human rights. These other work areas are standard for special procedures mandate holders of the Human Rights Council, regularly supported by the Secretariat. However many of the activities engaged in by the Special Rapporteur to promote good practices have been separate and apart from such standard work areas, very often in response to specific requests by Governments, indigenous peoples and United Nations agencies. The Special Rapporteur's work to promote good practices has therefore required resourcefulness and innovation.

9. Central to the Special Rapporteur's promotion of good practices at the national level has been his advocacy to advance commitment to, and operationalization of, the Declaration on the Rights of Indigenous Peoples. During the first term of his mandate, the Special Rapporteur focused on encouraging acceptance of the Declaration by those States that did not vote in favour of its adoption by the General Assembly in September 2007. He welcomed the reversal of positions by the four States that had cast votes against the Declaration: Australia, Canada, New Zealand and the United States of America. Subsequent to their expressions of support for the Declaration, the Special Rapporteur carried out visits to Australia (A/HRC/15/37/Add.4), New Zealand (A/HRC/15/37/Add.9) and the United States of America (A/HRC/21/47/Add.1). The Special Rapporteur also expressed his appreciation for the announcements of support for the Declaration by Colombia and Samoa, two States that had abstained from the vote in 2007.

10. In addition, during the course of his two mandate terms, the Special Rapporteur has responded to requests by State officials and indigenous peoples to provide assistance with constitutional and legislative reform efforts focused on harmonizing national frameworks with applicable international standards related to the rights of indigenous peoples. In 2008 the Special Rapporteur provided technical assistance to the Constituent Assembly of Ecuador within the context of Ecuador's constitutional revision process, which resulted in one of the most advanced constitutions in the world with respect to the rights of indigenous peoples

(A/HRC/9/9/Add.1, annex 1). In follow-up, in 2010, the Special Rapporteur visited Ecuador and issued "Observations on the progress and challenges in implementing the guarantees of the Constitution of Ecuador on the rights indigenous peoples" (A/HRC/15/37/Add.7).

11. A significant number of requests for assistance made to the Special Rapporteur by Governments have focused on issues concerning the duty of States to consult with indigenous peoples and the related principle of free, prior and informed consent. In response, the Special Rapporteur has provided his observations and recommendations on several occasions, including for Chile in 2009, in the context of that Government's constitutional reform process (A/HRC/12/34/Add.6, appendix A), and in 2012, in relation to the Government's draft regulation on indigenous consultation and participation; for Colombia in 2010, regarding the development of a law or regulation on the duty to consult with indigenous peoples and Afro-Colombian communities on matters affecting them; for Guatemala in 2011, on the Government's initiative to regulate a procedure for consultation with indigenous peoples; for Peru in 2011 and 2012, in relation to the development of a law and corresponding regulation on consultation with indigenous peoples; and for Brazil in 2012, around the development of mechanisms for consultations with indigenous peoples and clarifications regarding the practical dimensions of the principle of free, prior and informed consent.

12. The Special Rapporteur has also provided technical assistance to Governments as they develop laws and policies related to other issues. For example, he has been involved in promoting good practices regarding indigenous peoples' access to justice and coordination between State and indigenous justice systems. In June 2010, the Special Rapporteur offered comments to the Government of Ecuador in the context of its efforts to develop a law in that regard, and in April 2013 he provided detailed comments on a protocol developed by the Supreme Court of Mexico for justice administrators regarding the rights of indigenous individuals and peoples. Further, at the request of the Government of Suriname and the indigenous and tribal peoples of that country, in 2011 the Special Rapporteur travelled to Suriname to provide advice on the development of legislation to protect indigenous and tribal land rights (A/HRC/18/35/Add.7).

13. Complimentary to his work promoting good practices at the national level, the Special Rapporteur has dedicated significant energy to advancing decisions, programmatic reforms and initiatives by international actors. A primary focus of these efforts has been assisting United Nations programmes and specialized agencies to align programmes and policies with international standards concerning indigenous peoples.

14. In seeking to advance harmonization of international programmes with international standards, the Special Rapporteur has collaborated with the United Nations Development Programme; the World Bank Group, including the International Finance Corporation; the World Intellectual Property Organization; the United Nations Educational, Scientific and Cultural Organization (UNESCO); the Food and Agriculture Organization of the United Nations; the United Nations Global Compact; and OHCHR. In addition, in his last report to the General Assembly (A/67/301), the Special Rapporteur provided comments on the need to bring the myriad activities within the United Nations system that affect indigenous peoples into conformity with relevant international standards. Specific United Nations processes and programmes reviewed in that report include those relating to

the institutions just mentioned, as well as to the Convention on Biological Diversity; the United Nations Framework Convention on Climate Change; the United Nations Conference on Sustainable Development; and United Nations and World Bank programmes aimed at reducing emissions from deforestation and forest degradation.

15. The Special Rapporteur has also sought to raise awareness about, and promote, the rights of indigenous peoples through his participation in seminars and other events. Since assuming his mandate in 2008, he has participated in some 41 conferences and seminars in 19 different countries on various issues related to indigenous peoples. Descriptions of those events, as well as the Special Rapporteur's statements, can be found on the website maintained by the support project for the Special Rapporteur on Indigenous Peoples at the University of Arizona (www.unsr.jamesanaya.org).

16. The promotion of good practices and providing technical assistance are key areas in which the Special Rapporteur has seen his work have a positive effect, with many of his recommendations being taken up in legal and policy reforms made at the international and national levels. In the future, he would like to see additional attention placed on providing technical assistance directly to indigenous peoples themselves, including in order to strengthen their negotiation capacity and their ability to carry out their own initiatives in promotion of their rights. States, the United Nations, and donor agencies should lend support to indigenous peoples in this regard.

2. Country reports

17. Reporting on the human rights conditions of indigenous peoples in specific countries is one of the main tools available to the Special Rapporteur in fulfilment of the various components of his mandate, for which there is a fairly well developed methodology and set of expectations that generally apply for all special procedures mandate holders of the Human Rights Council. Those reports include conclusions and recommendations that aim to strengthen good practices, identify areas of concern, and improve on the human rights conditions of indigenous peoples in a specific country context.

18. In developing the reports, the Special Rapporteur visits the country under consideration, including the capital and specific areas or communities of concern. He engages with Government representatives, indigenous peoples, and other actors, including members of civil society and, if there is one, the United Nations country team. Country visits provide an important opportunity to draw attention to the concerns of indigenous peoples in a specific country, including through engaging with the media. In this regard, as is the usual practice for county visits of special procedures mandate holders, at the end of each of his visits, the Special Rapporteur holds a press conference, during which he presents his initial observations and conclusions. During his visit to Argentina, the Special Rapporteur was accompanied by a film crew which produced an educational video on his visit, a good practice that he considers could be developed further to raise awareness of the work of mandate holders.

19. Country visits occur only with the consent and cooperation of the Government concerned, although the Special Rapporteur has also developed methods for reporting on country situations without conducting on-site visits, in view of the lack of cooperation of some Governments in that regard, as discussed further below. He

has observed, regretfully, that even some countries that have open invitations to special procedures mandate holders have been unresponsive to requests for visits or have delayed unacceptably in agreeing to dates for visits. The Special Rapporteur believes that the Human Rights Council should develop means to ensure that States act in good faith in accordance with their open invitations to special procedures mandate holders. He also hopes that the Human Rights Council, OHCHR, and the special procedures mandate holders will develop methodologies for reviewing human rights situations in countries that do not respond positively to visits.

20. Over the course of his mandate thus far, the Special Rapporteur has conducted visits to and issued reports concerning indigenous peoples in Brazil (A/HRC/12/34/Add.2); Nepal (A/HRC/12/34/Add.3); Botswana (A/HRC/15/37/Add.2); Chile (A/HRC/12/34/Add.6); Colombia (A/HRC/15/37/Add.3); Australia (A/HRC/15/37/Add.4); the Russian Federation (A/HRC/15/37/Add.5); the Sápmi region (the traditional territory of the Sami people) in Norway, Sweden and Finland (A/HRC/18/35/Add.2); New Zealand (A/HRC/18/35/Add.4); the Republic of the Congo (A/HRC/18/35/Add.5); New Caledonia (France) (A/HRC/18/35/Add.6); Argentina (A/HRC/21/47/Add.2); the United States of America (A/HRC/21/47/Add.1); El Salvador (A/HRC/24/41/Add.2); and Namibia (A/HRC/24/41/Add.1). In July 2013, the Special Rapporteur visited Panama and is in the process of developing his report on the conditions of indigenous peoples in that country. Before the end of 2013, the Special Rapporteur will carry out visits to Canada and Peru, and he looks forward to visiting one or two final countries before his mandate ends in April 2014. These visits and reports to examine the general human rights situation of indigenous peoples in the countries under review are in addition to the visits and reports by the Special Rapporteur to examine specific cases of alleged human rights violation in accordance with the communications procedure (see para. 33, below).

21. The Special Rapporteur notes that his reports on Chile, Colombia, and New Zealand were to evaluate the progress made in those countries in implementing the recommendations made by his predecessor in earlier reports. His upcoming visit to and report on Canada will also be in follow-up to a visit by the former Special Rapporteur. Subsequent to each of his initial or follow-up country reports, the Special Rapporteur has sent additional letters in accordance with his communications procedure regarding specific areas of concern addressed in his reports.

22. The Special Rapporteur's report on the Sami people following his visit to the Sápmi region, the traditional territory of the Sami people that includes parts of Norway, Sweden and Finland, is different from the standard country reports that are typically issued by special procedures mandate holders that focus on a single country. Given the fact that the Sami people live across the international borders of those three countries, the Special Rapporteur issued a consolidated report on the situation of the Sami people, addressing their human rights conditions in each of the countries. He considers that more reporting could be done along these lines, given the prevalence of indigenous peoples living in more than one country and the cross-border challenges that they face. A complicating factor, however, is obtaining the acceptance for visits from more than one State.

23. In addition, given that only one country in Asia — Nepal — responded favourably to the Special Rapporteur's request for a visit, and in the light of the high number of communications he has received from that region regarding human rights

concerns, in March 2013, the Special Rapporteur conducted a two-day consultation in Kuala Lumpur, during which he consulted with indigenous peoples from Cambodia, India, Indonesia, Nepal, the Philippines, Viet Nam, Bangladesh, Japan, Malaysia, Thailand, and Myanmar. The Special Rapporteur's report on the consultation (A/HRC/24/41/Add.3) provides an overview of the main issues raised during the consultation and contains a series of overarching conclusions and recommendations on the basis of the information received.

24. Within the terms of his mandate, the Special Rapporteur is communicating directly with the relevant Governments in Asia about many of the concerns raised during the consultation, and is requesting their views on these concerns. He intends to issue corresponding observations and recommendations, noting positive developments and outstanding challenges. These communications and any responses to them will be made public and presented to the Human Rights Council in 2014. Still, further attention should be placed on the situation of indigenous peoples in the Asia region in the coming years. The Special Rapporteur hopes that Asian Governments will show increased openness to engaging on indigenous issues and will increase cooperation with the mandate of the Special Rapporteur on the rights of indigenous peoples.

25. While country reports are intended to raise awareness about the human rights concerns of indigenous peoples in specific countries and to provide guidance on how to address those concerns, there is a need to devote greater efforts to publicize and disseminate the reports among the relevant stakeholders, and develop strategies to use the recommendations in the report to effect change. In this connection, a practice employed by the Special Rapporteur on occasion has been to present his findings, either in person or by videoconference, to a cross-section of actors at the country level, allowing them the chance to learn about the reports and to ask him questions directly about them, as he has done in the case of several country reports. United Nations country teams have played an important role in supporting the organization of some of these presentations. The Special Rapporteur also notes as a good practice the development of a working group by the Government of Norway, in collaboration with Sami leaders, to consider means of implementing recommendations made in the report on the conditions of the Sami people. However, much more could be done to make known and make use of country reports, and the Special Rapporteur hopes that OHCHR, United Nations country teams, and non-governmental organizations especially, will continue to develop methodologies and invest resources towards this end.

3. Specific cases of allegations of human rights violations

(a) Communications procedure and follow-up

26. Another principal focus of the Special Rapporteur's work throughout his mandate has been responding, on a continual basis, to allegations of human right violations in specific cases. This work area is carried out in accordance with his mandate from the Human Rights Council, in its resolution 15/14, to gather, request, receive and exchange information and communications from all relevant sources, including Governments, indigenous peoples and their communities and organizations, on alleged violations of the rights of indigenous peoples. In communicating with Governments on specific cases, the Special Rapporteur is, for

the most part, responding to information submitted to him by indigenous peoples and their organizations, and non-governmental organizations.

27. In general, he acts on detailed and credible information that presents a serious situation falling within his mandate and in which intervention has a reasonable chance of having a positive impact, either by drawing needed attention to the situation or by prompting Government authorities or other actors into corrective action. Alternatively, the Special Rapporteur may take action where the situation is representative of, or connected to, a broader pattern of human rights violations against indigenous peoples. The Special Rapporteur has been careful to respond to allegations of human rights violations from a wide range of regions and countries.

28. The usual first step in taking action on a case is for the Special Rapporteur to write a letter to the Government concerned, along with a request that the Government respond in either 60 days, or in urgent cases involving immediate threats to the indigenous peoples concerned, 30 days. Cases addressed over the course of the Special Rapporteur's mandate demonstrate a number of ongoing barriers to the full enjoyment of the collective and individual rights of indigenous peoples.

29. Within the bounds of available resources, the Special Rapporteur often takes concrete steps to follow up to his letters of allegation or urgent appeals. In many cases, the Special Rapporteur has provided detailed observations with analyses of the issues raised and specific recommendations to the States concerned, in an effort to engage Governments in constructive dialogue conducive to finding solutions to problems and building good practices.

30. The Special Rapporteur has striven to be appropriately selective in the cases to which he devotes significant follow-up efforts, focusing on situations that are especially problematic or are emblematic of issues that are faced by indigenous peoples in particular countries or throughout the world. Through the in-depth analysis of specific situations, the Special Rapporteur has aimed to consolidate approaches for addressing similar kinds of problems and developing appropriate responses, in the light of the United Nations Declaration on the Rights of Indigenous Peoples and other relevant instruments.

31. On occasion, the Special Rapporteur has issued public statements concerning situations that, in his view, require immediate and urgent attention by the Governments concerned. During his mandate, the Special Rapporteur issued a total of 27 public statements, of which 7 were issued jointly with one or more of the other special procedures mandate holders. Public statements provide an important opportunity to call attention to particularly troubling situations involving immediate threats to the rights of indigenous peoples, and are an essential element of the work of special procedures mandate holders.

32. The Special Rapporteur has also developed the practice of carrying out site visits to assess specific cases. Throughout the course of his mandate, the Special Rapporteur carried out site visits to evaluate the situation of the Charco la Pava community and other communities affected by the Chan 75 hydroelectric project in Panama (see A/HRC/12/34/Add.5); the situation of indigenous peoples in relation to violent clashes in Bagua and Utcubamba, Peru (A/HRC/12/34/Add.8); the situation of indigenous peoples affected by the Marlin mine in Guatemala (A/HRC/15/37/Add.8 and A/HRC/18/35/Add.3); the development of the hydroelectric project El Diquís in

Costa Rica (A/HRC/18/35/Add.8); and the process to develop legislation to secure indigenous and tribal peoples' rights to lands and resources in Suriname (A/HRC/18/35/Add.7).

33. In the view of the Special Rapporteur, the ability to respond quickly to situations requiring immediate attention, including carrying out on-site visits to help to calm tense situations or mediate dialogue, is one of the most important aspects of the work of special procedures mandate holders, and should be encouraged. However, this work is outside the standard framework of work methods typically employed by special procedures mandate holders. The Special Rapporteur has had to seek alternative funding for these missions, which require efforts that generally take some time. There are challenges, therefore, in being appropriately responsive to cases that merit on-site attention.

34. The Special Rapporteur has also sent several letters to corporations involved in activities — usually extractive activities — that have given rise to allegations of human rights violations. It is of note that all the corporations to which the Special Rapporteur has addressed letters have responded in depth. The Special Rapporteur is of the view that more engagement with business enterprises is needed and he hopes that greater emphasis will be placed on this in the future.

(b) Outcomes

35. Since assuming the mandate in 2008, the Special Rapporteur has thus far sent 125 allegation letters and urgent appeals, 55 of which were sent jointly with other special procedures mandate holders, and 35 follow-up letters. Further, he has provided detailed observations and recommendations in 22 cases reviewed. In total, the Special Rapporteur sent 182 communications to 45 different States. Communications were transmitted regionally as follows: South America, 88; Asia, 36; Africa, 25; North America, 19; Europe and Russia, 6; Middle East, 3; and Oceania, 3.

36. Certainly, the cooperation of the Government is essential to the effectiveness of the procedure. The Special Rapporteur has received a total of 113 replies to his 182 letters sent, representing a reply rate of 62 per cent. He acknowledges with gratitude all States that have transmitted responses to the communications sent. In this context, the Special Rapporteur recalls paragraph two of the Human Rights Council resolution 15/14, in which the Council requested all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, to furnish all available information requested in his/her communications, and to react promptly to his/her urgent appeals. While the majority of States have responded to his communications, a significant number have not, with clear negative implications for the effectiveness of the communications procedure.

37. The Special Rapporteur has issued on an annual basis reports containing summaries of letters sent, replies received, and any observations and recommendations (A/HRC/9/9/Add.1; A/HRC/12/34/Add.1; A/HRC/15/37/Add.1; A/HRC/18/35/Add.1; A/HRC/21/47/Add.3; A/HRC/24/41/Add.4). Since 2011, OHCHR has issued reports, on a periodic basis, containing all of the letters sent and replies received by all special procedures mandate holders of the Human Rights Council. Short summaries of allegations communicated to the respective State or other entity are included in the joint communications reports. The complete texts of communications sent and replies received are accessible electronically through

hyperlinks in those reports (A/HRC/23/51; A/HRC/22/67; A/HRC/21/49; A/HRC/20/30; A/HRC/19/44; A/HRC/18/51; A/HRC/24/21).

38. In the view of the Special Rapporteur, responding to specific allegations of human rights violations represents a cornerstone of the work of the mandate. In contrast to many other complaint procedures before international or regional human rights bodies, the communications procedure of special procedures mandate holders allows for immediate action. Use of the communications procedure does not have restrictive admissibility requirements, and any individual or group of individuals can present a complaint to the Special Rapporteur. Another benefit is that, as noted above, intervention with Governments involved and follow-up can take many forms, and there is thus an important level of flexibility available to the Special Rapporteur to respond to the various cases presented to him. Challenges faced in relation to the communications procedure, however, include the limited resources to respond to the high number of requests for intervention received by the Special Rapporteur on a daily basis, and the often lack of responsiveness of many Governments to the allegations raised and to preventing or remedying any violations.

4. Thematic studies

39. Throughout his mandate, the Special Rapporteur has sought to identify common issues affecting indigenous peoples on a global scale and examine measures needed to address those concerns. However, taking into consideration that, in accordance with Human Rights Council resolution 6/36, paragraph 1 (a), the principal mandate of the Expert Mechanism on the Right of Indigenous Peoples is to develop studies and research-based advice for the Human Rights Council, the Special Rapporteur has striven to carry out his thematic work in a way that is complementary to, and non-duplicative, of the studies of the Expert Mechanism and that draws on his unique experiences from other work areas.

40. In each of his annual reports to the Human Rights Council, the Special Rapporteur has examined key issues, including the following: the significance of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/9/9); the duty of States to consult with and obtain the consent of indigenous peoples before adopting measures that affect them (A/HRC/12/34); the responsibility of corporations to respect the rights of indigenous peoples (A/HRC/15/37); and violence against indigenous women and girls (A/HRC/21/47).

41. In addition, the Special Rapporteur dedicated significant energy during the second term of his mandate to the issue of extractive industries operating in or near indigenous peoples' territories, dedicating all or part of three annual reports to this theme (A/HRC/18/35, A/HRC/21/47 and A/HRC/24/41). The Special Rapporteur would like to draw the particular attention of the General Assembly to his last report to the Human Rights Council dated September 2013, which represents the culmination of his three years of investigation into this issue. In the report, the Special Rapporteur underscores that a preferred model for resource extraction and development is through indigenous peoples' own initiatives and enterprises; addresses issues related to the standard scenario when States or third-party business enterprises promote the extraction of natural resources within indigenous territories, including issues related to consultation and consent; and finally, identifies conditions for getting to and sustaining indigenous peoples' agreement to extractive activities promoted by the State or third-party business enterprises.

42. In developing his report on extractive industries and indigenous peoples, the Special Rapporteur distributed a questionnaire to States, indigenous peoples and business enterprises to gather their views on the positive and negative aspects of extractive industries in indigenous territories. He also participated in numerous meetings to gather perspectives on the issue from indigenous peoples, Governments, and companies, including meetings in Australia, Norway, Sweden, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. In addition, the Special Rapporteur launched an online forum to gather examples of specific extractive projects that are being carried out in or near indigenous peoples territories, and collected and analysed numerous cases studies, including those that have contained elements of good practices.

43. In his reports to the General Assembly, the Special Rapporteur has addressed thematic issues, including: the United Nations Declaration, its general character and content and the operationalization of the rights (A/64/338); the right of indigenous peoples to development with culture and identity and the right of indigenous peoples to participation (A/65/264); the duty of States to consult with and obtain the consent of indigenous peoples before adopting measures that affect them and the responsibility of corporations to respect the rights of indigenous peoples (A/66/288); and the need to harmonize the myriad activities within the United Nations system which affect indigenous peoples (A/67/301).

B. Coordination with other human rights bodies

1. Coordination with other United Nations mechanisms with mandates regarding indigenous peoples

44. The Special Rapporteur's mandate from the Human Rights Council, as set out in resolution 15/14, paragraph 1, requires him to work in close cooperation and coordination with other special procedures and subsidiary organs of the Council, in particular with the Expert Mechanism on the Rights of Indigenous Peoples, relevant United Nations bodies, the treaty bodies and regional human rights organizations. Since the beginning of his mandate, the Special Rapporteur has consistently worked in coordination with the United Nations Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples to promote and protect the rights of indigenous peoples. The three mechanisms have met regularly at least once a year to identify and coordinate their responses to the challenges and opportunities related to the protection and promotion of indigenous rights.

45. A key component of coordination has been the participation of the Special Rapporteur in the regular sessions of the Permanent Forum and Expert Mechanism. During the annual sessions, the Special Rapporteur has contributed to discussions of substantive issues under consideration. Recently, the Special Rapporteur has participated in interactive dialogues with meeting participants, during which States, indigenous peoples, non-governmental organizations, and others can pose questions regarding various issues.

46. In addition, the Special Rapporteur has developed the practice of holding parallel meetings with indigenous peoples and organizations during the annual sessions. These meetings have provided indigenous peoples and organizations with the opportunity to voice their specific concerns regarding alleged human rights violations in their countries directly to the Special Rapporteur. The practice was

developed in light of the fact that numerous indigenous individuals go to the annual meetings of the Permanent Forum and the Expert Mechanism with complaints about specific situations, although neither mechanism has a mandate to follow up with the Governments concerned. The Special Rapporteur has typically held some 20 to 30 individual meetings during each of the annual sessions, and he follows up on many of the cases received in accordance with his communications procedure. He hopes that the next Special Rapporteur will be able to continue this practice and that the Secretariat will continue to provide support in this regard.

47. Another central aspect of collaboration between the Special Rapporteur, the Permanent Forum and the Expert Mechanism has centred around the development of thematic studies. The Special Rapporteur has provided comments on the diverse studies of these mechanisms, drawing from the various aspects of his work as Special Rapporteur. The three mechanisms collaborated in each other's examination of the issue of extractive industries affecting indigenous peoples, striving to avoid duplication and to ensure that the work is mutually reinforcing.

2. Coordination with other United Nations human rights mechanisms, institutions and processes

48. The Special Rapporteur has, on a continual basis, collaborated with other United Nations human rights mechanisms and institutions in relation to various issues related to the protection and promotion of the human rights of indigenous peoples, including specific cases of allegations of violations. Most notably, the Special Rapporteur has coordinated with other special procedures mandate holders of the Human Rights Council in their review of cases, country situations, and thematic issues of mutual concern.

49. In addition, the Special Rapporteur has, on occasion, coordinated with United Nations human rights treaty bodies, especially the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. This coordination has taken place both in relation to these bodies' periodic review of countries and in their examination of specific cases — with the Committee on the Elimination of Racial Discrimination, under its urgent action and early warning procedure, and with the Human Rights Committee, under the communications procedure established under its first Optional Protocol. In regard to some countries or cases being reviewed by United Nations treaty bodies, the Special Rapporteur, via the Secretariat, has been able to share information gathered during on-site country visits and advise on his observations and recommendations.

50. The recommendations of the Special Rapporteur with respect to specific country situations have also been raised during the Human Rights Council's universal periodic review mechanism. Through coordination with the Secretariat, the Special Rapporteur has highlighted particular issues of concern regarding countries under review, drawing from his examination of specific cases and country situations. His observations and recommendations have been reflected in the compilation of United Nations materials prepared by OHCHR, submitted to Member States.

51. However, in general, more could be done, including within the Secretariat and among the experts, to coordinate and share information. There is still a significant level of duplication among the various human rights bodies and some inconsistent recommendations. For their part, indigenous peoples and others working on their

behalf should be forthright when submitting information to the Special Rapporteur if the same matter has also been submitted to another special procedures mandate, United Nations human right treaty bodies, regional human rights mechanism, or other relevant procedure, so that adequate coordination between the mechanisms can take place and unnecessary duplication avoided.

52. Finally, the Special Rapporteur has participated in the preparations for the high-level session of the General Assembly to be known as the World Conference on Indigenous Peoples and convened in September 2014. He participated in an initial preparatory meeting to discuss the World Conference in Copenhagen in January 2012 and a second meeting, together with members of the Permanent Forum and the Expert Mechanism, in Guatemala in December 2012. In addition, in June 2013, the Special Rapporteur spoke at an indigenous peoples' preparatory session for the World Conference, held in Alta, Norway, which resulted in a draft outcome document detailing the indigenous representatives' collective expectations and proposals for the World Conference. He has also participated in panels on the World Conference in the context of the 2013 annual sessions of the Permanent Forum and the Expert Mechanism, as well as during a half-day panel on the World Conference during the twenty-fourth session of the Human Rights Council in September 2013.

3. Coordination with regional human rights bodies

53. The Special Rapporteur has also striven to maintain a dialogue with regional human rights institutions. Given the specific relevance of the Americas region to the mandate of the Special Rapporteur on the rights of indigenous peoples, his principal coordination in this regard has been with the institutions of the inter-American human rights system: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The main aspect of coordination has been in relation to specific cases under review by both the Special Rapporteur and the institutions of the inter-American system.

54. The Special Rapporteur has also followed up with several Governments regarding the status of implementation of decisions previously made within the inter-American system. For example, in December 2008, he participated in discussions leading up to a ceremony in Awas Tingni, Nicaragua, during which the Government presented the indigenous community with its long-awaited title to its ancestral lands as required by a 2001 judgement of the Inter-American Court of Human Rights. In addition, as noted above, in March 2011, the Special Rapporteur visited Suriname to provide technical assistance to the Government to develop laws to recognize and protect indigenous peoples' rights to lands and resources, which was in the context of the judgement of the Inter-American Court in the case of the *Saramaka People vs. Suriname*. Further, in July 2011, the Special Rapporteur provided expert testimony before the Inter-American Court in the case of the *Kichwa Indigenous People of Sarayaku v. Ecuador*, regarding consultation and free, prior and informed consent.

55. With respect to coordination with other regional human rights institutions, in April 2013, the Special Rapporteur participated in an Exchange workshop on indigenous peoples' rights between the Inter-American Commission on Human Rights, the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, and the African Commission on Human and Peoples' Rights, held in Banjul. The workshop provided the Special Rapporteur with

the opportunity to present his work in the African context and globally, and exchange information with the regional mechanisms on common challenges and objectives. On the basis of the discussion that took place at that meeting, the Special Rapporteur plans to visit Kenya in September 2013 to meet with members of the African Commission's Working Group on Indigenous Populations/Communities in Africa, to discuss strategies for implementation of the Commission's principal decision to date regarding indigenous peoples, its decision in the case of the *Endorois Welfare Council vs. Kenya*.

56. The Special Rapporteur hopes that, in the future, the mandate will develop more systematized methodologies for coordinating with the regional human rights institutions, as well as strengthen collaboration with the ASEAN Intergovernmental Commission on Human Rights. As above, he encourages indigenous peoples and their representatives to think strategically when submitting the same case to both the Special Rapporteur and the regional human rights institutions, considering the added value that each procedure might be able to offer and avoiding unnecessary duplication.

III. Strengthening commitment to the Declaration on the Rights of Indigenous Peoples and its implementation

57. Throughout his mandate the Special Rapporteur has been especially cognizant of the directive by the Human Rights Council, in its resolutions 15/14 and 6/12, paragraph 1 (g), that he promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate. Because of this directive and the Declaration's stature as the principal statement of the United Nations on indigenous rights, since assuming his mandate in May 2008, the Special Rapporteur has regarded the Declaration as providing the principal normative frame of reference for his work, as made clear in his numerous thematic and country reports and communications regarding alleged violations of human rights.

58. The Special Rapporteur continues to observe that, despite expressions of commitment to the Declaration and significant positive developments worldwide, a great deal remains to be done to see the objectives of the Declaration become a reality in the everyday lives of indigenous peoples of the world. In previous reports, the Special Rapporteur has provided extensive analysis of the Declaration and the need for concrete steps to advance in the implementation of the human rights standards enshrined therein (A/67/301, paras. 26 to 32, 82; A/66/288, paras. 62 to 76; A/65/264, paras. 54 to 69; 83 to 88; A/64/338, paras. 37 to 64, 68 to 75; and A/HRC/9/9, paras. 18 to 90). He still fears that the wide gap between the rights mentioned in the Declaration and its effective implementation will persist, leading to a certain complacency and acceptance of that condition by dominant actors and within the United Nations system. As he has stressed before, this cannot be allowed to happen.

59. The Special Rapporteur perceives that, among many States and other powerful actors, commitment to the Declaration is weakened, not just by contending political and economic forces, but by certain ambiguities and positions about the status and content of the Declaration. In the following discussion, the Special Rapporteur confronts some of these ambiguities and positions, in the hope of helping to

overcome their debilitating effects and advancing toward a strong global commitment to the Declaration and its implementation. Also discussed is the need for greater awareness of the Declaration and of its role as and instrument of reconciliation and social harmony.

A. The normative weight of the Declaration

60. Throughout the course of his mandate, the Special Rapporteur has heard numerous Governments emphatically characterize the Declaration on the Rights of Indigenous Peoples as non-binding or merely aspirational, thereby according the Declaration a diminished status and rationalizing a diminished commitment to its terms. Although the Special Rapporteur has addressed the issue of the Declaration's status in past reports, given the persistent references to the Declaration as non-binding, the Special Rapporteur would like to again provide some observations on this issue.

61. The Special Rapporteur readily acknowledges that, under prevailing international law doctrine, declarations adopted by resolution of the United Nations General Assembly, unlike treaties, are not themselves direct sources of law. But to say simply that the Declaration is non-binding is an incomplete and potentially misleading characterization of its normative weight. It has long been widely understood that standard-setting resolutions of the General Assembly can and usually do have legal implications, especially if called "declarations", a denomination usually reserved for standard-setting resolutions of profound significance.

62. The General Assembly has a long history of adopting declarations on various human rights issues, including the first international human rights instrument of the United Nations, the Universal Declaration of Human Rights, adopted in 1948. These declarations, like other resolutions, are adopted by the General Assembly under the authority granted to it under Article 13 (1) (b) of the Charter of the United Nations to make recommendations for the purpose of assisting with the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

63. Although technically a resolution, the Declaration has legal significance, first, because it reflects an important level of consensus at the global level about the content of indigenous peoples' rights, and that consensus informs the general obligation that States have under the Charter — an undoubtedly binding multilateral treaty of the highest order — to respect and promote human rights, including under Articles 1 (2), 1 (3), 55 and 56 of the Charter. The Declaration was adopted by an overwhelming majority of Member States and with the support of indigenous peoples worldwide and, as noted earlier, the few States that voted against the Declaration each subsequently reversed their positions. Especially when representing such a widespread consensus, General Assembly resolutions on matters of human rights, having been adopted under the authority of the Charter itself, can and do inform Member States' obligations under the human rights clauses of the Charter.[1]

[1] Ian Brownlie, *Principles of Public Interna..onal Law* (Oxford, 7th ed., 2009), p. 15.

64. Secondly, some aspects of the Declaration — including core principles of non-discrimination, cultural integrity, property, self-determination and related precepts that are articulated in the Declaration — constitute, or are becoming, part of customary international law or are general principles of international law, as found by the International Law Association after a committee of experts conducted an extensive survey of international and State practice in relation to the Declaration.[2] A norm of customary international law arises when a preponderance of States (and other actors with international personality) converge on a common understanding of the norm's content and generally expect compliance with, and share a sense of obligation to, the norm. It cannot be much disputed that at least some of the core provisions of the Declaration, with their grounding in well-established human rights principles, possess these characteristics and thus reflect customary international law.

65. Finally, the Declaration is an extension of standards found in various human rights treaties that have been widely ratified and that are legally binding on States. Human rights treaties with provisions relating to the rights of indigenous peoples include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. The human rights treaty bodies that interpret and apply these treaties now frequently apply their provisions in ways that reflect the standards in the Declaration and sometimes explicitly refer to the Declaration in doing so. This happens, in particular, with regard to treaty provisions affirming principles of non-discrimination, cultural integrity and self-determination: principles that are also incorporated into the Declaration and upon which the Declaration elaborates with specific reference to indigenous peoples. Although the Declaration is not necessarily dispositive when interpreting a treaty the provisions of which intersect with those of the Declaration, it provides important guidance of significant weight.[3]

66. Whatever its legal significance, moreover, the Declaration has a significant normative weight grounded in its high degree of legitimacy. This legitimacy is a function not only of the fact that it has been formally endorsed by an overwhelming majority of United Nations Member States, but also the fact that it is the product of

[2] See International Law Association, 75th conference, resolution No. 5/2102, para. 2 (Sofia, 5 August 2012); International Law Association, Committee on the Rights of Indigenous Peoples, Final Report (2012).

[3] In communications to the Special Rapporteur, at least one State that has endorsed the Declaration has nonetheless taken the position that the Declaration should not be used to interpret treaties to which it is a party because the Declaration is not legally binding and because it was adopted subsequent to those treaties and not negotiated in their specific context. See Diplomatic Note by the Permanent Mission of the United States of America, Geneva, dated 17 November 2011, p. 5, in A/HRC/19/44. The Special Rapporteur considers this position to be at odds with a posture of support for the Declaration and to be jurisprudentially unsound. Inasmuch as States have embraced the principles of indigenous rights embodied in the Declaration by having voted in favour of it or declared support for it, it is hard to see how the Declaration could not be regarded as highly instructive in applying a treaty that is relevant to indigenous peoples. To decline to see the Declaration as instructive in this way goes against trends in international law and practice by which human rights treaties are interpreted in a dynamic fashion, in the light of new understandings and in accordance with the *pro homine* principle, which requires the application of human rights treaties in a way that most favours the protection of human rights. See Inter-American Court on Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgement of 31 August 2001, paras. 146-148.

years of advocacy and struggle by indigenous peoples themselves. The norms of the Declaration substantially reflect indigenous peoples' own aspirations, which after years of deliberation have come to be accepted by the international community. The Declaration's wording, which has been endorsed by Member States, explicitly manifests a commitment to the rights and principles embodied in the Declaration. It is simply a matter of good faith that States adhere to that expression of commitment to the norms that indigenous peoples themselves have advanced.

67. In sum, the significance of the Declaration is not to be diminished by assertions of its technical status as a resolution that in itself has a non-legally binding character. The Special Rapporteur reiterates that implementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification.

B. The Declaration's foundations in equality and human rights

68. Equally debilitating to the Declaration are characterizations of the instrument as granting a status to indigenous peoples of privilege over other groups, a characterization the Special Rapporteur has heard expressed by State officials and others in positions of influence in numerous local settings outside the diplomatic arena. Such characterizations of the Declaration implicitly question its fairness, thereby undermining its legitimacy.

69. Far from elevating indigenous peoples over others, the Declaration, in article 2, aims to ensure that indigenous peoples and individuals are equal to all other peoples and individuals. Equality and non-discrimination are bedrock principles of the Declaration, in accordance with the United Nations human rights regime more generally, as made clear in the Declarations preamble (inter alia, paras. 2, 5 and 22) and in several of its provisions (inter alia, art. 1, 2 and 17). To ascribe to the Declaration any design of privilege or superiority is a gross distortion of its true character.

70. While the Declaration does articulate standards that are specific to indigenous peoples, it does not fundamentally create for indigenous peoples new substantive rights that others do not enjoy, as pointed out previously by the Special Rapporteur (A/64/338, para. 47). Rather, it recognizes for them the human rights that they should have enjoyed all along as part of the human family, contextualizes those rights in the light of their particular circumstances and characteristics, in particular their communal bonds, and promotes measures to remedy the rights' historical and systemic violation. The interconnectedness of all human rights and their universality, along with their propensity to give rise to context-specific prescriptions, is illustrated by the Declaration's articulation of norms that are, at the same time, grounded in universal human rights but specific to indigenous peoples. The interrelationships between universal rights of equality, self-determination, cultural integrity, property, development, and social and economic welfare, understood in the specific context of indigenous peoples, define a range of specific indigenous peoples' rights that are articulated in the Declaration.

71. In keeping with this context specificity, the basic normative justification of the Declaration is stated in paragraph 6 of the preamble, in which it is acknowledged that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and

resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests. The Declaration's preamble thus stresses the essentially remedial purpose of the instrument against a backdrop of universal human rights.

72. It is precisely because the human rights of indigenous groups have been denied, with disregard for their particular characteristics, that there is a need for the Declaration. In other words, the Declaration exists because indigenous peoples have been denied equality, self-determination, and related human rights, and not in order to grant them privilege over others. This remedy should not have to exist, just as the history of oppression that gives rise to it should not have been. But that history did occur, and its ongoing consequences make necessary a global remedial response that is appropriate to indigenous peoples' particular circumstances and characteristics, which is what the Declaration represents.[4]

C. The centrality of the right of self-determination

73. A centrepiece of the United Nations Declaration on the Rights of Indigenous Peoples is article 3, which affirms: "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." During the more than two-decade debate that preceded the adoption of the Declaration, it was increasingly understood that self-determination is a foundational principle that anchors the constellation of indigenous peoples' rights.

74. Yet the Declaration's affirmation of indigenous peoples' right to self-determination, and hence the force of the Declaration itself, has been blunted by the position advanced by some States that this right is different from the self-determination of peoples in international law. This position has served only to detract from the core consensus that is represented in the Declaration's affirmation of self-determination for indigenous peoples and from defining the specific modalities for implementing the right.

75. The Special Rapporteur strongly disagrees with any implication that the right to self-determination of indigenous peoples, as affirmed in the Declaration, is apart from the right to self-determination that peoples generally enjoy under international law, for reasons set forth in his extensive academic writing on the subject.[5] To be sure, the right to self-determination, like other rights, gives rise to different prescriptions in different contexts, but at its core, it is the same fundamental human right for all peoples. To suggest otherwise is difficult, if not impossible, to justify within a human rights framework in which equality and non-discrimination are bedrock maxims, and is contrary to the Declaration itself, which provides, as

[4] For an in-depth discussion of the remedial character of the Declaration, see S. James Anaya, "Why there should not have to be a declaration on the rights of indigenous peoples", in S. James Anaya, ed., *International Human Rights and Indigenous Peoples* (Aspen-Wolters Kluwer, 2011), p. 58.

[5] See, e.g., S. James Anaya, *Indigenous Peoples in International Law* (Oxford University Press, 2nd ed., 2004), pp. 97-128; S. James Anaya, "The right of indigenous peoples to self-determination in the post-declaration era", in Claire Chartres and Rodolfo Stavenhagen, eds., *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (IWGIA, 2009).

already pointed out, that indigenous peoples and individuals are equal to all other peoples and individuals.

76. That being said, the Special Rapporteur is of the view that it is not necessary to resolve the debate about the nature of the Declaration's affirmation of self-determination in relation to international law in order for there to be a meaningful commitment to that affirmation. The position that the self-determination recognized in the Declaration is different from that of international law is born of the assumption, mistaken in the view of the Special Rapporteur, that under international law, self-determination neces...rily means the right to become an independent State. But indigenous peoples, as such, rarely, if at all, seek independent statehood outside of classic situations of non-self-governing territories. Thus, the position is of little or no practical utility for the States that assert it and is mostly a distraction.

77. Whatever the validity of that position, it is clear that the right to self-determination affirmed in the Declaration, like the right as affirmed in international law generally, has a core meaning around which there is substantial consensus. That meaning, essentially, is that indigenous peoples have the right to pursue their own destinies in all spheres of life, under conditions of equality, and to live within governing institutional orders that are devised accordingly. The focus of States, along with that of relevant international institutions and indigenous peoples themselves, should be on strengthening commitment to this core principle and taking practical steps to implement it.

D. The need for greater awareness of the Declaration and its role in promoting reconciliation and social harmony

78. Based on his work over the two terms of his mandate, the Special Rapporteur is convinced that a still pending crucial task is raising awareness about the Declaration among Government actors, the United Nations system, indigenous peoples themselves, and, more generally, society. The Special Rapporteur has observed throughout his work a lack of knowledge and understanding about the Declaration, the values it represents or the deep-seated issues confronting the indigenous peoples that it addresses.

79. As already noted, the text of the Declaration evolved from sentiments articulated by indigenous peoples that prompted discussion on a global scale about their rights and place in the world. Government actors were moved to embrace a vision of a world in which indigenous peoples and their diverse cultures survive as parts of the global human mosaic. The Declaration's words mark the transition from an era in which dominant thinking justified infringing or ignoring indigenous peoples rights to an era in which indigenous peoples' rights are recognized within the global programme to advance human rights and peaceful relations among the peoples of the world.

80. Implementation of standards articulated in the Declaration first requires an awareness of those standards and their justification by Government and United Nations actors at all levels, including those actors whose functions and powers touch upon the lives of indigenous peoples. There is also a great need for educating the public about the Declaration and the issues it seeks to address. It will remain difficult for the goals of the Declaration to be achieved amid competing political, economic and social forces unless the authorities and non-indigenous sectors of the

societies within which indigenous peoples live come to share in awareness and conviction about those goals.

IV. Conclusions and recommendations

A. Activities pursuant to the mandate

81. **The Special Rapporteur is grateful for the opportunity to report to the General Assembly on his activities since the beginning of his mandate in 2008. These activities fall within four interrelated areas: promoting good practices; country reports; cases of alleged human rights violations and thematic studies.**

82. **Within each of the work areas, the Special Rapporteur has built upon established work methods generally employed by Human Rights Council special procedure mandate holders, while also developing new ones, especially in relation to the promotion of good practices and addressing cases of alleged human rights violations through the communications procedure. The Special Rapporteur considers that the innovation in work methods has contributed to greater responsiveness to the human rights concerns of indigenous peoples and to assisting States and other actors to address those concerns, in furtherance of his mandate by the Human Rights Council.**

83. **The Secretariat, States and other relevant actors should encourage and support innovation and flexibility in the work methods employed by the Special Rapporteur and his successor mandate holders, when those work methods and their objectives are clearly within the terms his mandate by the Human Rights Council and consistent with the Council's Code of Conduct for special procedures mandate holders.**

84. **The Special Rapporteur is grateful to those States that have cooperated with his mandate, but notes that several States have declined to give their consent to country visits or to respond to his communications regarding alleged human rights violations. The Special Rapporteur urges that the lack of cooperation by some States with the Special Rapporteur and other special procedures mandate holders be given greater and more systematic attention within various human review processes within the United Nations system, including the Human Rights Council's universal periodic review, and that specific methods be developed to encourage cooperation, including for country visits.**

85. **Efforts should be made to more broadly and effectively disseminate the reports of the Special Rapporteur, especially country reports and reports on cases of alleged human rights violations, and to develop strategies and methods to use the recommendations of the Special Rapporteur to effect positive change. States should, as a matter of course, disseminate to all relevant officials, interested parties and the public, those reports that concern them.**

86. **The Special Rapporteur has promoted and enjoyed a notable level of cooperation with the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, other United Nations institutions, and regional human rights mechanisms. Greater efforts should be**

made, however, to systematize methods of cooperation, especially in regard to the flow of information on matters of mutual concern.

B. Strengthening commitment to the Declaration on the Rights of Indigenous Peoples and its implementation

87. The Declaration on the Rights of Indigenous Peoples is the principal normative frame of reference for all aspects of the work of the Special Rapporteur. Despite expressions of commitment on the part of States to the Declaration on the Rights of Indigenous Peoples and significant positive developments worldwide, a great deal remains to be done to see the objectives of the Declaration become a reality in the everyday lives of indigenous peoples of the world. Among many States and other powerful actors commitment to the Declaration is weakened by certain ambiguities and positions about the status and content of the Declaration.

88. Debilitating to the Declaration are repeated assertions that the Declaration is non-binding, characterizations of the Declaration as granting privileges to indigenous peoples over others, and the position advanced by some States that the right to self-determination affirmed in the Declaration is different from self-determination in international law. These assertions and positions are each flawed, as explained by the Special Rapporteur (paras. 61-78); they only serve to weaken the force of the broad consensus underlying the Declaration and of its role as an instrument of human rights and restorative justice.

89. There is an urgent need for greater awareness about the human rights values and concerns represented by the Declaration and about the standards that are articulated in the Declaration to address those concerns. Greater efforts must be put in place to achieve such broad awareness among governmental and other influential actors, the international system, and the general public. Without broad understanding about the reasons for the Declaration and the path forward that it marks, that path will be difficult, if not impossible to implement.

90. The Special Rapporteur urges States and others to recall why the Declaration exists in the first place — that is to improve the human rights conditions of the world's indigenous peoples — and to renew a commitment to that end.